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February 5, 2002

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William F. Caton
Acting Secretary
Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

FEB 05 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Petition of Mid-Rivers Telephone Cooperative, Inc. for an
Order and Rule Pursuant to Section 251(h)(2) of the
Communications Act declaring that Mid-Rivers Shall Be
Treated as the Incumbent Local Exchange Carrier in Terry,
Montana.

Dear Mr. Caton:

Enclosed are an original and two copies of the Petition of Mid-Rivers Telephone Cooperative as described above.

Please date-stamp and return the enclosed copy of this filing. Please contact me if there are any questions regarding this filing.

Sincerely yours


David Cosson

Enclosures

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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEB 05 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Petition for Order Declaring)
Mid-Rivers Telephone Cooperative, Inc.)
An Incumbent Local Exchange)
Carrier in Terry, MT)

WC
-ee Docket No. 02-78

PETITION OF MID-RIVERS TELEPHONE COOPERATIVE, INC.

Mid-Rivers Telephone Cooperative, Inc., ("Mid-Rivers") pursuant to Section 251(h) of the Communications Act of 1934, as amended, 47 U.S.C. § 251(h), and Section 51.223(b) of the Commission's Rules, 47 C.F.R. § 51.223(b), files this Petition requesting the Commission to issue an order and rule declaring that Mid-Rivers shall be treated as the incumbent local exchange carrier ("ILEC") in the Terry, Montana telephone exchange. In support of its Petition, Mid-Rivers provides the following information.

FACTS:

Mid-Rivers provides telephone service as an ILEC to approximately 11,000 access lines in a substantial portion (27,000 square miles) of eastern Montana, generally between the Missouri and Yellowstone Rivers. Mid-Rivers was established as a cooperative in 1952 in order to bring telephone service to then unserved or poorly served rural areas. At that time, the Bell System subsidiary, Mountain States Telephone Company (subsequently US West and now Qwest), provided telephone service mainly to the larger cities and towns and service generally was not available to the farmers and ranchers in this very sparsely populated area. A few smaller towns, such as Terry, were served by the Bell company at that time.

Over a period of several years, the quality of service provided by Qwest, and its predecessors in Terry, and similar towns, significantly declined as maintenance was ignored and the equipment became obsolete. Today the nearest Qwest customer service location to Terry is at least 200 miles away. The result of relegating towns such as Terry to communications backwaters while Qwest concentrated on addressing perceived competitive threats in the cities, was, predictably, to create substantial dissatisfaction among the subscribers. Observing the reliable service provided over modern facilities and the access to local management enjoyed by

Mid-Rivers' subscribers, residents of Terry had inquired for many years as to the possibility of changing to Mid-Rivers' service.

Adoption of the 1996 amendments to the Communications Act (the "1996 Amendments") made it possible for Mid-Rivers to construct new outside plant facilities and initiate service in Terry as a competitive local exchange carrier ("CLEC") in 1997.¹ The response was overwhelming, with approximately 90% of the subscribers converting to Mid-Rivers in the first year. Mid-Rivers currently estimates it serves 97% of the 317 residence access lines and 97 % of the 118 business access lines in Terry.² Mid-Rivers has, in effect, extended its ILEC based operations and become the dominant telephone company in Terry.³ As a facilities based carrier, Mid-Rivers provides telephone service entirely over its own facilities in Terry, and does not resell Qwest service or utilize unbundled elements of Qwest service in the town. Mid-Rivers does have an interconnection agreement with Qwest in order that the few remaining Qwest subscribers can communicate with Mid-Rivers subscribers. Mid-Rivers has been designated an Eligible Telecommunications Carrier ("ETC") in Terry by the Montana Public Service Commission.⁴

STATUTE AND RULES

Section 251(h)(1) essentially defines an Incumbent Local Exchange Carrier as a telephone company that was a member of the National Exchange Carriers Association at the time of enactment of the 1996 Amendments. Section 251(h)(2) permits the Commission, by rule, to designate other LECs as incumbents if a three-part test is met. First, the LEC must have a comparable position in the area to the ILEC. Second, the LEC must have substantially replaced the ILEC. Third, treatment of the second LEC as an ILEC must be consistent with the public interest, convenience and necessity and the purposes of section 251.⁵ In its decision implementing Sections 251 and 252, the Commission adopted Section 51.223(b), which provides for requests to

¹ Mid-Rivers offers service to the entire Terry exchange; however, service outside the town limits is offered over resold facilities of Qwest. Mid-Rivers also operates as a CLEC in competition with Qwest in Fairview, Glendive, Miles City, Sidney, and Wiebaux, MT. This petition, however, is limited to Terry.

² These figures are for the town of Terry; for the entire exchange Mid-Rivers estimates in serves 93% of the access lines.

³ Mid-Rivers also initiated cable TV service in Terry in competition with an existing AT&T service. AT&T subsequently discontinued service and abandoned its facilities.

⁴ Mid-Rivers Telephone Cooperative, Inc., Petition for Designation as an Eligible Telecommunications Carrier in the Terry, Montana, Exchange, Doc. No. D2001.5.50, Order No. 6358, *Final Order*, July 24, 2001.

⁵ 47 U.S.C. 251(h)(2)

the Commission for an order declaring that a particular LEC be treated as an ILEC pursuant to Section 251(h)(2).⁶ The Commission stated that it would require clear and convincing showings that the three part test was met.⁷

DISCUSSION

With well over 90% of the local exchange market in Terry, Montana, Mid-Rivers meets the first test of Section 251(h)(2) in that for all practical purposes it occupies a position in the community comparable to that held by Qwest. As an ETC, it is obligated to, and does, provide basic telephone service throughout the service area and advertises the availability of that service. Second, its overwhelming market-share demonstrates that Mid-Rivers has more than substantially replaced the ILEC, Qwest.

Third, the public convenience and necessity will be served by *de jure* recognition of the *de facto* situation in Terry. Virtually all customers are served by Mid-Rivers. Although Qwest still has facilities in Terry, they are ill-maintained.⁸ Mid-Rivers not only offers basic telephone service over modern, reliable plant, but also offers significant additional services such as DSL, Internet, ITV to the school, and CLASS. Consistent with the underlying purpose of Section 251 to promote the development of competitive markets, Mid-Rivers is ready, willing and able to undertake the obligations of an incumbent.

Upon grant of this petition, Mid-Rivers will promptly file a petition for waiver of the frozen study area rules and execute such other documents as are necessary to incorporate the Terry exchange into its ILEC study area and the NECA tariff.

⁶ Implementation of the Local Competition Provision in the Telecommunications Act of 1996, *First Report and Order*, 11 FCC Rcd 15499, 16110 (1996)

⁷ *Id.*


⁸ Mid-Rivers would not object to a Qwest relinquishment of ETC status in Terry pursuant to Section 214(e)(4) and would consider purchase of Qwest's facilities in the Terry exchange.

CONCLUSION

Mid- Rivers Telephone Cooperative, Inc., having demonstrated that the conditions set forth in Section 251(h)(2) of the Communications Act are satisfied, respectfully requests that the Commission adopt a rule and declaration that it is now the Incumbent Local Exchange Carrier in Terry, Montana.

Respectfully submitted

Mid-Rivers Telephone Cooperative, Inc.

By 

David Cosson

Its Attorney

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February 5, 2002

Attachment

cc: Michelle Carey
Chief, Policy Program and Planning Division
Common Carrier Bureau

I, Gerry Anderson, General Manager of Mid-Rivers Telephone Cooperative Inc., have read the foregoing petition of Mid-Rivers Telephone Cooperative, Inc. and state that the facts therein are true and correct to the best of my knowledge.

Dated this 4th day of February, 2002.


Gerry Anderson